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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/766,736

01/22/2001

Edward J. Bortolini

Bortolini

1298

24283

7590

08/03/2004

PATTON BOGGS  
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DENVER, CO 80264

EXAMINER

RAMAN, USHA

ART UNIT

PAPER NUMBER

2616

DATE MAILED: 08/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/766,736

Applicant(s)

BORTOLINI ET AL.

Examiner

Usha Raman

Art Unit

2611

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 22 January 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

**DETAILED OFFICE ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-10 are rejected under 35 U.S.C. 102(b) as being anticipated by applicant's prior art system.

In regards to claims 1 and 6, applicant's admitted prior art system (in figures 1 and 2) discloses a broadband modem termination system for managing data transmissions through a broadband network a plurality of end user locations and a head end (111, 113), the broadband network comprising a hierarchical network having at least two levels, the broadband modem termination system further comprising, a down stream data transmission means located at a first level of hierarchical network (at hubs 122 and 124) for transmitting data in the downstream direction from a source of program material at the head end to selected one of plurality of end user locations; an upstream data transmission means (passive fiber nodes, 141-149, having the capability of upstream DOCSIS channels) located at a second level of the hierarchical network located downstream of a first level in the hierarchical network.

In regards to claims 2, and 7, data in digital baseband IP format is transmitted downstream from the CMTS to the end user locations are transmitted

over existing RF channels. Therefore, the data received at the CMTS in digital baseband IP format is inherently converted in a RF based format for transmission over RF channels to a plurality of end user locations. Note figure 1, and descriptions in page 4, lines 15-19 and page 5, lines 5-10 of the disclosure.

In regards to claims 3, 5, 8 and 10, the RF channels are located downstream of the CMTS, therefore upstream data received upstream at the CMTS from the end user locations are received in radio frequency based format and converted in digital baseband IP format for transmission to head end as indicated in figure 1.

In regards to claims 4, and 9 the downstream data transmission means (hubs 122 and 124) and the upstream data transmission means (passive fiber nodes 141-149) operate independent of each other.

3. Claims 1, 4, 6, and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Bodeep et al. (US Pat. 5,864,672)

In regards to claims 1, and 6, Bodeep teaches a broadband termination system comprising a hierarchical network comprising a first level of downstream data transmission means for transmitting data from head end to a plurality of subscriber locations and a second level of upstream data transmission means for transmitting data received from subscriber locations to the head end, such that the second level is located downstream of the first level in the hierarchical network. Note figure 2 and descriptions in column 2, lines 59-67, column 3, line

1-column 5, line 38. Bodeep also offers to solve the upstream bandwidth limitations and allows flexible bandwidth allocations. Note column 2, lines 24-32.

In regards to claims 4 and 9, the downstream and upstream data transmission means operating independent of each other.

***Conclusion***

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Usha Raman whose telephone number is (703) 305-0376. The examiner can normally be reached on Mon-Fri: 9am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Faile can be reached on (703) 305-4380. The fax phone number for the organization where this application or proceeding is assigned is 703-308-5359.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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07-09-04



**VIVEK SRIVASTAVA**  
**PRIMARY EXAMINER**